

**IN THE HIGH COURT OF HIMACHAL PRADESH, SHIMLA.**

**CWP No.401/2002**

**Reserved on. 27.4.2007**

**Decided on.1.6.2001**

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**Pawan Kumar**

**...Petitioner.**

**Versus**

**Municipal Council, Dalhousie**

**...Respondents**

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*Coram*

**The Hon'ble Mr. Rajiv Sharma, J.**

*Whether approved for reporting ?<sup>1</sup>.No*

**For the petitioner : Mr. Chander Paul Sood, Advocate**

**For the respondent Mr. Neeraj Kumar Sharma, Advocate.**

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**Rajiv Sharma, J.**

This petition is directed against the judgment dated 2.11.2001 passed by the learned District Judge, Chamba in Civil Misc. Appeal No. 11 of 2001.

The brief facts necessary for the adjudication of this petition are that the respondent-Council had received a complaint from its Engineer and Sanitation sections that the petitioner was making unauthorized construction by raising RCC pillars for new building below hotel Jaspreet, Dalhousie without getting prior permission. The Council served a notice upon the petitioner on 2<sup>nd</sup> August, 2000 to stop the construction and also to remove the unauthorized construction. Consequently matter was placed before the respondent-council on 17<sup>th</sup> June, 2001. The Council vide its resolution No.179(2) unanimously resolved to demolish the unauthorized construction raised by the petitioner. The Executive Officer

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<sup>1</sup> *Whether the reporters of Local Papers may be allowed to see the judgment?* No

had issued order on 5<sup>th</sup> July, 2001 directing the petitioner to demolish the unauthorized construction of RCC slab on RCC pillars measuring 18'x30' within seven days. The petitioner aggrieved by the order i.e. 5<sup>th</sup> July, 2001 preferred an appeal under section 212 (1) of the H.P. Municipal Act, 1994 before the learned District Judge, Chamba Division Chamba camp at Dalhousie. The learned District Judge, Chamba dismissed the appeal on 2.11.2001.

Mr. Chander Paul Sood, Advocate appearing on behalf of the petitioner has strenuously argued that the petitioner had obtained the permission from the Municipal Council and has also submitted the building plans to the Town Planner. He has further elaborated his submissions by submitted that the copies of the notices were not received by the petitioner and thus the order dated 5<sup>th</sup> July, 2001 is bad in law. As far as the judgment of the learned District Judge is concerned, Mr. Chander Paul Sood, Advocate submitted that the learned District Judge has not taken into consideration the mandatory provisions of the H.P. Municipal Act, 1994.

Mr. Neeraj Kumar Sharma, Advocate appearing on behalf of the respondent-council has supported the order passed by the Executive Officer, Municipal Council, Dalhousie dated 5<sup>th</sup> July, 2001 and judgment dated 2.11.2001.

I have heard the parties and perused the record.

The petitioner had started raising the construction in the year 1999. A written complaint had been received by the respondent-council on 6<sup>th</sup> April, 1999 and consequently a notice was issued to the petitioner on 1.5.1999. The petitioner has not filed reply to the show cause notice and ultimately the resolution was passed by the respondent-council for demolition of the unauthorized construction and as such order dated

2.8.2000 was issued by the Executive Officer, Municipal Council, Dalhousie. The petitioner could not raise the construction without getting his plan approved either from the Municipal Council or from the Town and Country Planning Department. Mr. Neeraj Kumar Sharma, Advocate submitted that the petitioner at no given time had sought permission from the Municipal Council and merely submitting the documents to the Town and Country Planning will not amount to the petitioner's building plans being approved by the Department. Mr. Sharma has submitted that the notices issued by the respondent-council were not replied by the petitioner and he carried on with the unauthorized construction work.

As far as the serving of notices on the petitioner is concerned, it has come on the record that the same were posted on a conspicuous place of the building and the petitioner himself obtained the copy of the same which is marked as Annexure PC.

The learned District Judge has examined the record and the findings recorded by him will not be interfered with by this Court while exercising the jurisdiction under Article 226/227 of the Constitution of India.

The Hon'ble Supreme Court in **M.I. Builders Pvt. Ltd. V. Radhey Shyam Sahu** (1999) 6 SCC 464 has held that the Court should order demolition of such construction even though builder has invested considerable amount. Their Lordships of the Hon'ble Supreme Court have opined as under:

**“No consideration should be shown to the builder or any other person where construction is unauthorized. This dicta is now almost bordering the rule of law. Stress was laid by the appellant and the prospective allottees of the shops to exercise judicial discretion in moulding the relief. Such a discretion cannot be exercised which encourages illegality or perpetuates an illegality. Unauthorized construction, if it is**

**illegal and cannot be compounded, has to be demolished. There is no way out. Judicial discretion cannot be guided by expediency. Courts are not free from statutory fetters. Justice is to be rendered in accordance with law. Judges are not entitled to exercise discretion wearing the robes of judicial discretion and pass orders based solely on their personal predilections and peculiar dispositions. Judicial discretion wherever it is required to be exercised has to be in accordance with law and set legal principles.”**

The upshot of the above discussion is that the petitioner had raised unauthorized construction without seeking prior permission of the Municipal Council as per the provisions of the H.P. Municipal Act, 1994 and the Building Bye-Laws framed thereunder.

Accordingly the writ petition is dismissed with no order as to costs and the interim order dated 9.1.2001 is vacated

**( Rajiv Sharma), Judge**

June1, 2007  
\*Awasthi\*